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30 August 1951

MEMORANDUM FOR: EXECUTIVE ASSISTANT TO THE DIRECTOR
FROM: Acting General Counsel
SUBJECT: Membership of the Project Review Committee

1. Pursuant to your oral request, certain general comments are furnished on the legal aspects pertaining to Mr. Jackson's continuing to vote in his new capacity on those matters of concern to the Project Review Committee. [redacted] [redacted], dated 23 August 1951, designates Mr. William H. Jackson as "Special Assistant and Senior Consultant to the Director of Central Intelligence."

2. Within the Government, the term "consultant" denotes one who serves in an advisory capacity to an administrative officer of the Government as distinguished from one who serves as an administrative officer or employee in the performance of duties and responsibilities imposed by law upon the agency in which employed—that is, one who gives his opinion regarding a problem or question presented to him by the administrative officers, but does not perform or supervise performance of such duties and responsibilities (23 Comp. Gen. 497, 7 January 1944). The above definition of "consultant" has been affirmed repeatedly in subsequent decisions of the Comptroller General. On the other hand, a "special assistant" has no such defined limitations. The nature of the special assistant's duties is dependent entirely upon instructions issued to him by the head of the department or other authorized official, consistent with laws and regulations.

3. This office has been advised informally that Mr. Jackson has accepted an appointment action establishing his relationship to the Government as a consultant. Presumably, as in other cases, there would be available to Mr. Jackson in such status travel expenses while away from his home or regular place of business, including per diem in lieu of subsistence while at his place of employment in Washington, D. C. Such expenses are authorized in Section 5, Public Law 600.

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4. The question of whether an employee is a "consultant" is generally one of fact rather than one of law and will be determined primarily by the administrative authority on the basis of the functions assigned and the duties performed, keeping in mind the legal principles as defined by the Comptroller General.

5. It would appear that the responsibility of voting formally on matters of concern to the Project Review Committee is one which normally would be discharged by an officer or employee of the Agency in the performance of duties and responsibilities imposed by law upon this Agency. The designation in a personnel action of such an individual as a consultant probably would be held as not consistent with the assigned duties, and such person would more appropriately be considered a temporary or part-time employee. Consequently, the Agency would have no authority to pay the types of travel expenses, including per diem, mentioned above in connection with consultants. The above does not apply, of course, in the event it is merely desired that such individual advise or furnish his opinion to the designated members of the Project Review Committee.

6. The above comments on the legal aspects of this matter are intended as a guide to assist you in your thinking on this matter. If you have more specific questions in mind, we shall be glad to answer them upon request.

JOHN S. WARNER

OGC/JSW:mww

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